

APPEAL NO. 161289
FILED SEPTEMBER 1, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 25, 2016, in Houston, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the compensable injury of (date of injury), does not extend to a right knee lateral meniscus tear and that the respondent (claimant) had disability resulting from the compensable injury from June 24, 2015, through the date of the CCH.

The appellant (carrier) appealed the hearing officer's disability determination arguing that such determination is contrary to the great weight and preponderance of the evidence.

The appeal file does not contain a response from the claimant to the carrier's appeal.

The hearing officer's determination that the compensable injury of (date of injury), does not extend to a right knee lateral meniscus tear has not been appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The claimant was injured on (date of injury), when a beverage cart struck his right knee. He sought medical attention on June 4, 2013, was diagnosed with a right knee contusion and strain, and was released to return to work with restrictions. Thereafter, on June 11, 2013, the claimant was released to return to work full duty. He continued working at full duty and sought no further medical treatment for his right knee injury until May 18, 2015, on which date he consulted (Dr. C) under his private healthcare insurance with complaints of a two year history of right knee pain. Dr. C obtained imaging studies which revealed a tear of the right lateral meniscus for which he recommended surgical repair. The claimant took himself off work after June 23, 2015, and began treating with (Dr. R) on July 2, 2015. The claimant testified that his right lateral meniscus tear is a result of the compensable injury of (date of injury), and that he has been unable to work due to the compensable injury since June 24, 2015. The parties stipulated that the claimant sustained a compensable injury on (date of injury), that consisted of a right knee contusion and strain.

Disability is defined as the inability to obtain and retain employment at wages equivalent to the pre-injury wage because of a compensable injury. See Section 401.011(16). The claimant has the burden to prove that he had disability as defined by Section 401.011(16). Disability is a question of fact to be determined by the hearing officer. See Appeals Panel Decision 042097, decided October 18, 2004.

In the Discussion section of her decision, the hearing officer stated that the claimant's testimony and the reports from Dr. R support a determination that the claimant had disability from June 24, 2015, through the date of the CCH. However, the claimant testified that he was unable to work because of his torn meniscus. Additionally, Dr. R's initial Work Status Report (DWC-73) taking the claimant off work as of July 2, 2015, is based upon a diagnosis of right knee sprain/strain and right knee meniscus tear. Dr. R's other DWC-73s, which cover the period through April 1, 2016, are based upon diagnoses of knee sprain/strain, knee contusion and internal derangement of the knee. Finally, Dr. C's letter dated June 25, 2015, indicates the claimant may not return to work until after he has undergone surgery to repair his torn meniscus.

The evidence supporting the claimed period of disability is based upon a diagnosis of right knee lateral meniscus tear, found by the hearing officer not to be part of the compensable injury, or upon conditions other than a right knee contusion and right knee strain stipulated by the parties to be compensable. Additionally, the claimant returned to work in a full-duty capacity approximately one week following the compensable right knee contusion and strain of (date of injury), and continued to work full duty with no further medical treatment for his right knee until he consulted Dr. C on May 18, 2015, a date nearly two years following the date of the compensable injury. The hearing officer's determination that the claimant had disability resulting from the compensable injury from June 24, 2015, through the date of the CCH is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We accordingly reverse the hearing officer's determination that the claimant had disability resulting from the compensable injury from June 24, 2015, through the date of the CCH and render a new decision that the claimant did not have disability from June 24, 2015, through the date of the CCH.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge